

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: CHILDCARE AND SCHOOLS

Section 74: Funding for free of charge early years provision

366. The section amends sections 13A and 13B of the Childcare Act 2006 (“the 2006 Act”). Section 13A of the 2006 Act allow the Commissioners for HMRC and the Secretary of State (in practice the Secretary of State for Work and Pensions) to supply information that they hold for tax credit and social security functions to the Secretary of State (in practice the Secretary of State for Education) and English local authorities to use for the purpose of determining eligibility for free of charge early years provision (such provision is defined in regulations under section 7 of the 2006 Act).
367. The amendment to section 13A(3) extends the purpose for which data specified at 13A(1) and (2) can be used by the Secretary of State and English local authorities to include checking which children meet the qualifying criteria for additional funding for free of charge early years provision. The section also amends subsection 13A(6) to allow information to be supplied to individuals working on behalf of local authorities for the specified new purpose.
368. The section also amends the existing offence under section 13B of the 2006 Act relating to unauthorised disclosure of data. An individual who has received information lawfully under subsection 13A(3) and (5) can disclose that information in connection with assessing eligibility for funding for free of charge early years provision.

Section 75: Exemption from requirement to register as early years provider

369. This section will amend section 34(2) in Part 3 of the 2006 Act and make related changes to sections 63 of the 2006 Act and 94 of the Education and Skills Act 2008. The impact of these changes means that the existing exemption for schools not to register separately will be extended downwards to include two-year-olds.
370. **Section 34** sets out the requirement for early years providers, other than childminders, to be registered. Such early years providers must register in respect of particular premises. However, the revised subsection (2) will exempt from this requirement early years provision made for children aged two and over at a maintained school, non-maintained special school or independent school where that provision is made by the school and one or more pupils attend it.
371. The other changes are required to bring those sections in line with section 34(2). Section 63(1) makes provision for providers of early or later years provision which is not otherwise required to be registered with HMCI to register with HMCI on a voluntary basis in Part B of the General Childcare Register established under Part 3 of the 2006 Act. The change to section 34(2) means changes are also necessary to section 63(3) so

that a school may not register its childcare provision on the voluntary register when the provision is for a child who has attained the age of two, rather than the age of three.

372. The Childcare (Exemptions from Registration) Order 2008 provides, at article 9, an exemption from registration under section 34(1) for provision made at a school as part of the school's activities, by the proprietor or employee of the school, where the provision is for a registered pupil who has not attained the age of three but will do so before the expiry of the child's first term at the school. We intend to amend or remove this article in due course as it will no longer be relevant in light of the changes to section 34(2).
373. Changes to section 94 of the Education and Skills Act 2008 are necessary to amend section 94(5)(b) so that it refers to the Early Years Foundation Stage (EYFS) being part of the "independent school standards" for children who have attained the age of two. Making this change should remove the burden on independent schools with pupils age two from having to register on the Early Years Register, while continuing to allow effective inspections under the 2008 Act and ensuring that the EYFS is implemented as the standard for children age two.

Section 76: Childminding other than on domestic premises

374. Childcare providers in England such as childminders and other providers are regulated under Part 3 of the 2006 Act. Under that Part childminding is defined as provision on domestic premises for reward (i.e. payment or goods/services). "Domestic premises" means premises which are used wholly or mainly as a private dwelling. The section amends the definitions of childminding in section 96(4), (5), (8) and (9) of the 2006 Act to enable childminders to also operate on non-domestic premises for reward for up to half of their time using their childminder registration.
375. The amendments to sections 34 and 53 of the 2006 Act are consequential on the changes to the definitions of childminding in section 96 and make clear childminders continue to be required to register under Sections 33(1) and 52(1) of the 2006 Act rather than sections 34 and 53 of the 2006 Act which apply to other providers such as nurseries.

Section 77 (and Schedule 2): Registration of childcare: premises

376. This section introduces Schedule 2, which amends Part 3 of the 2006 Act in order to remove the requirement for certain childcare providers to be registered separately in respect of each of the premises from which they operate. However these providers will still be required to notify Ofsted and receive its approval before they can operate from individual premises. Schedule 2 also contains any necessary consequential amendments.